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Paper 134  
ENTERED: 23 November 2009

UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,405

SEARS ECOLOGICAL APPLICATIONS CO., LLC  
(6,436,310 B1 and 6,440,325 B1),  
Junior Party/Senior Party,  
v.  
MLI ASSOCIATES LLC  
(10/266,975 and 10/690,894),  
Senior Party/Junior Party.

Before: JAMESON LEE, RICHARD TORCZON, and SALLY C.  
MEDLEY, *Administrative Patent Judges*.

TORCZON, *Administrative Patent Judge*.

JUDGMENT

Bd.R. 127

following order to show cause

NOTICE: "Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding." 35 U.S.C. § 135(c); see also Bd.R. 205 (settlement agreements).

Following a decision under 35 U.S.C. § 146, the parties were invited to explain why the interference should continue.<sup>1</sup> Each party filed a response, but neither response suggested continuing the interference.<sup>2</sup> Accordingly, we proceed to judgment consistent with the earlier Board decision on the merits, as modified by the district court decision and as outlined in the order to show cause.

### ORDER

Judgment is ENTERED AGAINST the senior party for count 1.

Judgment is ENTERED AGAINST the senior party for count 2.

Claims 38-40, 42-44, 46, and 49 of the senior party's 10/266,975 application are FINALLY REFUSED.

Claims 36 and 37 of the senior party's 10/690,894 application are FINALLY REFUSED.

A copy of this judgment will be entered into the administrative records of the involved patents and applications.

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<sup>1</sup> Paper 131.

<sup>2</sup> Papers 132 and 133.

cc:

R. Danny Huntington, Malcolm K. McGowan, and Timothy A. Molino, BINGHAM MCCUTCHEN LLP, of Washington, D.C; and William R. Hansen, LATHROP & GAGE, L.C., and John Dellaportas, DUANE MORRIS LLP, both of New York, New York.

Eugene C. Rzucidlo, HUNTON & WILLIAMS, LLP, and John F. Volpe, HEDMAN & COSTIGAN, P.C., all of New York, New York.

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